In the Supreme Court of the United States

Supreme Court, U. S.
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October Term, 1974

No. 73-1541

ROBERT REID and NADIA ALICE REID,
Petitioners

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

FOR THE SECOND CIRCUIT

PETITIONERS BRIEF

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(a) OPINION BELOW

Robert and Nadia Reid vs. Immigration and Naturalization Service 492 F. 2d 251-264 (1974) (Opinion printed in full in appendix to Petition for Certiorari at page 1)

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(b) JURISDICTION

The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and 28 U.S.C. 2350 as recodified; recodification 28 U.S.C. Title 158, secs. 2341-2352.

(c) and (d) The Questions Presented for Review and Statute

1. The broad issue in this case is whether petitioners are saved from deportation by Sec. 241 (f) of the Immigration and Nationality Act. 8 U.S.C. Sec. 1251 (f) which provides:

"The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

June 27, 1952, ch. 477, Title II, ch. 5, § 241, 66 Stat. 204; July 18, 1956, c. 629, Title III, § 301 (b), (c), 70 Stat. 575; July 14, 1960, Pub. L. 86-648, § 9, 74 Stat. 505; Sept. 26, 1961, Pub. L. 87-301, § 16, 75 Stat. 655; Oct. 3, 1965, Pub. L. 89-236, § 11 (e), 79 Stat. 918."

2. More narrowly the issue is whether aliens who obtain entry into the United States under a false claim of citizenship and who become parents of children born in the United States, can qualify as aliens "otherwise admissible at the time of entry"

within the meaning of Sec. 241 (f), of the Immigration and Nationality Act.

3. In view of the express provision of the Statute (Sec. 241 (f) Immigration and Nationality Act), exempting from deportation aliens who "procure . . . entry into the United States by fraud or misrepresentation" and who are the parents of a United States citizen, did the United States Court of Appeals (Second Circuit) properly conclude that the exemption did not extend to aliens who procured such entry by falsely claiming United States Citizenship?

4. Is the application of the Statute (Sec. 241 (f) Immigration and Nationality Act) to be limited to aliens who gain entry by a particular species of fraud, namely, a fraud or misrepresentation in the course of obtaining immigrant visas?

5. Is the scope of this Court's decision in Immigration and Naturalization Service vs. Errico, 385 U.S. 214 (1966) limited in its application to aliens who gain entry by fraud in the course of obtaining immigrant visas, in view of the express language of the Statute (Sec. 241 (f)), its legislative history, congressional intent and humanitarian purpose?

(e) Statement of Case

Petitioners are a married couple, natives of Honduras. Each entered the U.S. by falsing claiming to be U.S. citizens. Two children were born in the United States after their entry. Petitioners have no arrest record and neither has ever been a member of a subversive organization. Deportation or required departure from the United States would result in considerable hardship to the family because one child is age two and another eight months, (at time of hearing) and because when petitioners came to the U.S. they disposed of their possessions in British Honduras and would have no home to which they can return.

In November 1971, petitioners were served with an Order to Show Cause why they should not be deported upon the following charges, (see Appendix p. 3); That they entered the United States by falsely claiming to be citizens, that they

never were citizens and did not present themselves to Immigration Officers for inspection as aliens, and that they were subject to deportation under Section 241 (a) (2) of the Immigration and Nationality Act by entering without inspection.

A hearing took place on December 13, 1971 before Special Inquiry Officer Eugene C. Cassidy. He issued his decision on May 10, 1972 (Appendix p. 4), finding that the petitioners were deportable as charged in the Order to Show Cause. At the hearing each petitioner applied for termination of the proceedings under the provisions of Section 241 (f) of the Immigration and Nationality Act. The Special Inquiry Officer denied these applications, but ordered that in lieu of deportation each petitioner be granted voluntary departure. He also issued an Order of Deportation as to each petitioner, in the event they did not depart voluntarily. They have not departed.

Petitioners appealed from the Special Inquiry Officer's Decision and Orders to the Board of Immigration Appeals, which dismissed the appeals on December 12, 1972, and affirmed the Orders of Deportation. (Appendix p. 5)

Petitioners filed a petition to review with the Second Circuit Court of Appeals on January 10, 1973, pursuant to Sec. 106 of the Immigration and Nationality Act, 8 U.S.C. Sec. 1105a. On February 13, 1974, the Second Circuit Court of Appeals dismissed the petition. (Mulligan, J. dissenting) Petitioners here seek a review of the decision and Judgment ordering the dismissal.

(f) SUMMARY OF ARGUMENT

A. Petitioners are entitled to the benefit of the Statute, section 241 (f) of the Immigration and Nationality Act by the explicit language of the Statute which applies to "Aliens who have. . .procured. . .entry into the United States by fraud or misrepresentation (Argument Section B)

B. If the statute requires interpretation, it must be construed in view of its legislative history and purpose which fully support application of the statute to aliens who gain entry by falsely claiming citizenship. (Argument Section C)

C. The interest of the aliens with family ties must be afforded great weight, and the humanitarian importance of maintaining family unity should be the controlling factor, in determining that these petitioners qualify as being "otherwise admissible" within the meaning of the Statute. (Argument Section D)

D. Any doubt in construing the Statute should be resolved in favor of the aliens (Argument Section D)

E. Petitioners qualify as "otherwise admissible" aliens who procured entry by fraud, within the scope of IMMIGRATION SERVICE v. ERRICO, Supra. (Conclusion)

F. The decision of the Court Below in effect amends the Statute by judicial construction. (Conclusion)

(g) ARGUMENT

A. Basic Claims of Parties

The basic claim of the government in the court below and before this court is that Section 241 (f) of the Immigration and Nationality Act does not encompass aliens who fraudulently enter the country by misrepresenting themselves as citizens, thereby "having avoided inspection as aliens." (Respondent's Brief, Second Circuit Court of Appeals) Stated another way the claim of the government is that Section 241 (f) applies only to aliens who gain entry by a particular species of fraud, namely, a fraud or misrepresentation in the course of obtaining immigrant visas. The court below sustained these claims largely on the basis

that petitioners by their fraudulent misrepresentations evaded inspection and investigation as aliens and therefore the Act did not apply to them. (Decision, Second Circuit, 492 F2d 251 at page 257)

Petitioners basic contention is that they are entitled to the benefit of Section 241 (f) by virtue of its explicit language, legislative history and purpose.

B. The Explicit Language of the Statute.

The respondent seeks to limit the application of the statute to aliens who gain entry by fraud in the process of obtaining immigrant visas. But the explicit language of the statute is that it applies to "aliens who have sought to procure, or have procured visas or other documentation or entry into the United States by fraud or misrepresentation." (Section 241 (f) Immigration and Nationality Act, emphasis added)

The government's contention here and the decision of the court below flies in the face of the express words "or entry" and in effect completely eliminates these words from the statute. As Circuit Judge Mulligan stated in his dissenting opinion "The statute is not limited to fraudulent visa-bearers but in so many words applies to those persons who have 'procured visas or other documentation, or entry into the United States by fraud or misrepresentation' " (492 F 2d 251 at page 260-261)

The explicit language of the Statute is also noted with emphasis by the Fifth Circuit Court of Appeals in

GONZALEZ de MORENO, PETITIONER V. UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT, 492 F. 2d 532 where the court stated at page 536:

"By its terms § 241 (f) provides relief for those who obtain visas, other documentation, or entry by means of fraud or misrepresentation. The use of the disjunctive indicates that the section was intended to apply to aliens who had no need to lie or misrepresent in the course of obtaining a visa, but whose actual entry into this country hinged on a misstatement of fact – whether intentional or innocent. One such class of

aliens would be those falsely representing themselves as American citizens. Indeed, given the requirement of a visa or recognized substitute document for the entry of nationals of most foreign countries and the improbability that one who had honestly obtained a visa would have reason to lie upon presenting his documentation at the border, the most logical application of the separate 'fraudulent entry' provision is to precisely those aliens in petitioner's position – those who entered under a claim of citizenship."

Thus the express language of the statute clearly encompasses the type of fraud practised by petitioners here by which they gained entry into the United States. The statute makes no such distinction as respondent seeks here. Petitioners submit that in view of the explicit language of the statute, there is no proper basis for discriminating among the techniques of fraud. The government's distinction would mean that the alien would be subject to deportation when claiming falsely that he was a citizen and would not be subject to deportation when falsely claiming that he was a skilled mechanic.

The decision of this court in Immigration Service vs. Errico, 385 U.S. 214, 87 S. Ct. 473 does not support respondent's claims in this regard.

See C Legislative History below at p. 9.

As the Ninth Circuit Court stated in Lee Fook Chuey vs. Immigration and Naturalization Service 439 F 2d. at page 248, in rejecting a similar contention of the government as to the type of fraud "This court will not base its decision on a fortuitous technical difference between the two types of fraud."

The court below, by focusing its attention on an interpretation of the phrase "otherwise admissible" ignores and distorts the true meaning of the explicit words "or entry into the United States by fraud...". In view of this explicit language of the statute which is lucid and crystal clear, as to the application of the statute to petitioners, no interpretation is indeed necessary or proper.

C. Legislative History and Purpose.

If by some stretch of the imagination the applicability of Section 241 (f) to these petitioners and the language used is considered ambiguous, then the statute need be construed in the light of its legislative history and purpose. The history and purpose is fully set forth in the Errico case, supra, and need not be repeated here in toto. However, since the court below based its decision largely on the basis that petitioners, by their fraud evaded inspection and investigation as aliens, we turn to a consideration of such history as will reveal congressional intent to embrace within the coverage of the statute those aliens who by their fraud evaded inspection and investigation as well as quota requirements.

First the purpose of the statute was basically humanitarian, to assist aliens who have fraudulently obtained entry, to maintain family unity. "The fundamental purpose of this legislation was to unite families... It was wholly consistent with this purpose for congress to provide that immigrants who gained admission by misrepresentation, perhaps many years ago, should not be deported. . .in light of its humanitarian purpose of presenting the breaking up of families composed in part at least of American citizens."

Immigration Service vs. Errico, cited above.

Lee Fook Chuey vs. Immigration Service, cited above.

Second, nowhere in the statute or legislative history is there the slightest indication that Congress intended or was even aware of any possible preference of visa-bearing aliens over aliens who enter by a false claim of citizenship at the border.

Gonzales de Moreno, Supra, 492 F 2d 532 at 536-7.

If anything the legislative comment accompanying Section 241 (f) indicates the contrary since it identified a primary concern with "border control" laxity, not visa-bearing laxity. The House Committee Report accompanying Section 7 of the 1957 Act identifies the primary beneficiaries as being:

"Mexican Nationals who, during the time when border-control

operations suffered from regrettable laxity were able to enter the United States and establish a family in this country. . .

H.R. Rep. No. 1199, 85th Cong. 1st Sess. p. 11, U.S. Code and Admin. News 1957, p. 2024.

This House Report also specifically refers to the beneficaries of the Act as being aliens guilty of misrepresentation "in obtaining documentation or entry.

Third: This Court is Errico (385 U.S. at page 221) discussed in detail the predecessor statute, particularly Section 7 of the 1957 Act, its history and purpose. The court then commented as follows:

"This section waived deportation under certain circumstances for two classes of aliens who had entered by fraud or misrepresentation. First, an alien who was 'the spouse, parent, or a child of a U.S. citizen. . .' was saved from deportation for his fraud if he was 'otherwise admissible at the time of entry.' Second, an alien who entered during the postwar period and misrepresented his nationality, place of birth, identity, or residence was saved from deportation if he was 'otherwise admissible at the time of entry' and if he could 'establish to the satisfaction of the Attorney General that the misrepresentation was predicted upon the alien's fear of persecution because of race, religion or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere.' (Emphasis supplied)

"The language would be meaningless if an alien who committed fraud for the purpose of evading quota restrictions would be deported as not 'otherwise admissible at the time of entry' Congress must have felt that aliens who evaded quota restrictions by fraud would be 'otherwise admissible at the time of entry' or it would not have found it necessary to provide further that, in the case of an alien not possessing a close familial relationship to a U.S. citizen or lawful permanent resident, the fraud must not be for the purpose of evading quota restrictions.

"This conclusion is reinforced by the fact that Congress further specified that the aliens who were not close relatives of U.S. citizens must establish that their fraud was not committed for the purpose of evading an investigation. Fraud for the purpose of evading an investigation, if forgiven by the statute, would clearly leave the alien 'otherwise admissible' if there were no other disqualifying factor. Elementary principles of statutory construction lead to the conclusion that Congress meant to specify two specific types of fraud that would leave an alien 'otherwise admissible' but that would nonetheless bar relief to those aliens who could not claim close relationship with a U.S. citizen or alien lawfully admitted for permanent residence." Emphasis supplied.

From the language of the court, and the legislative history, it clearly appears that application of the statute was intended to encompass two types of fraud situations, one involving an evasion of quota restrictions and the other involving an evasion of investigation and inspection.

Fourth: The court below cited a statement by Senator Eastland, Chairman of Judiciary Committee of the Senate, in commenting on those sections of the 1961 bill incorporating the prior waiver provisions in the current statute:

"Sections, 13, 14, 15 and 16 of the bill also incorporate into the basic statute provisions which have been contained in separate enactments. These provisions relate to the waiver of grounds of inadmissibility and deportability in the cases of certain close relatives of U.S. citizens and lawful permanent residents involving convictions of minor criminal offenses, fraudulent misrepresentation in connection with applications for visas or admission to the United States." Emphasis supplied.

107 Cong. Rec. 19653-19654.

As Judge Mulligan stated in his dissenting opinion in the court below, "Even the emphasized language of Senator Eastland's statement set forth in the majority opinion refers to fraudulent misrepresentations in connection with visa applications or admission into the United States." (492 F. 2d 251, p. 263)

In summary, the legislative history and purpose of the statute supports petitioners' view that the statute is not limited in its application to visa or document bearing aliens, but applies also to aliens who by misrepresentation evade inspection or investigation or who misrepresent themselves as citizens.

D. "OTHERWISE ADMISSIBLE" – Interpretation and the Balance of Factors

The government's position is, and the Court below held that the Statute is subject to interpretation and that the petitioners could not be considered "otherwise admissible" because of their evasion of inspection and investigation as aliens. If "otherwise admissible" is to be interpreted here then it must needs be interpreted, first, in light of the other language of the Statute, which, as has already been pointed out, specifically provides for aliens who enter by fraud other than a visa or documentation fraud. Secondly "otherwise admissible" must be construed in light of the history of the statute, which as noted above in Section C. clearly indicates the application of the statute to petitioners despite their purported evasion of inspection and investigation. Thirdly, the Government contends that petitioners here are evading the entire immigration and inspection process. This is not so. Although the aliens have entered by fraud, the Government may nevertheless obtain the necessary information to determine qualitative admissibility. The investigatory process may precede the determination of the claim for relief under Sec. 241 (f). The Government's ability to regulate the quality of immigrants is not significantly impaired. See Lee Fook Chuey supra.

As the Court stated in Lee Fook Chuey, "When Congress enacted this provision, (sec. 241 (f) it was reconciling strong and conflicting policies. Congress was dealing with problems arising from violations of the visa system, and had to do so in the context of ongoing family ties ..." (439 F. 2d at p. 250)

The interests of the aliens with family ties must be afforded great weight in view of the history and humanitarian purpose of the statute.

Those aliens who misrepresented essential facts to gain entry, as here, but who posses the required family relationship present a special case. While they fraudulently gained entry, nevertheless, Congress has decided in the interests of maintaining family unity that they should be given special relief. Despite the alleged circumvention of the statutory immigration system, such consideration is outweighed by the humanitarian importance of maintaining family unity. This is the holding of Errico and Lee Fook Chuey and also Gonzalez de Moreno.

IMMIGRATION SERVICE v. ERRICO, supra
LEE FOOK CHUEY v. IMMIGRATION SERVICE, supra
GONZALEZ de MORENO v. IMMIGRATION SERVICE, supra.

Fourthly, as Circuit Court Judge Mulligan stated in his dissent:

"INS is not helpless in the face of a claim by an alien that he is a U.S. citizen. If he is suspected of being an alien he must be inspected as an alien. . . the blunder of the constable here results, in effect, in the deportation of the petitioners as well as their native born American sons.

"I indeed agree that an alien who applies for a visa in advance of his entry into the United States is more readily investigated than one who poses as an American citizen at the point of entry. But this point is not raised in the legislative history and is not mentioned in the statute. The administrative inconvenience to INS in making a post hoc investigation of the Reids' qualitative admissibility is de minimis, in my view, in contrast to what the dismissal of this petition accomplishes.

"Mr. and Mrs. Reid are both gainfully employed in this country, have never been arrested since arriving and belong to no subversive organizations. There is no hint or suggestion that they are or have been qualitatively deficient in any of the categories mentioned by the majority. They have, moreover, become the parents of two native-born American boys who, by reason of their infancy (now ages 2 and 4), have no alternative but involuntary exile."

Finally, even if there was some doubt as to the correct con-

struction of the Statute, the doubt should be resolved in favor of the aliens. Deportation is a drastic measure. It is the forfeiture for misconduct of a residence in the United States. This court should not assume that Congress meant to trench on petitioners' freedom beyond that which is required by the narrowest of meanings of the words used.

IMMIGRATION SERVICE v. ERRICO, supra
DELGADILLO v. CARMICHAEL, 332 U.S. 388
FONG HAW TAN v. PHELAN, 333 U.S. 10.

E. THE STOWAWAY AND OVERSTAY CASES

The respondent and the court below attempt to draw an analogy between this case and the stowaway and overstay cases. The analogy is not valid. In Gambino v. I.N.S. 419 F. 2d 1355 (2nd Circuit 1970), the court pointed out that stowaways are given special treatment through the Immigration and Nationality Act and Congress could not possibly have intended 241 (f) to apply to stowaways. Also 241 (f) applies only where entry is gained by fraudulent misrepresentation, which is not involved in the case of a stowaway. "Fraud and misrepresentation cannot be equated to surreptitious entry without bending the language of Sections 241 (a) and 241 (f) into shapelessness and without ignoring the history of Section 241 (f) recited in Errico."

MONARREZ-MONARREZ v. I.N.S. 472 F. 2d 119
(9th Cir. 1972)

And in the case of temporary visitors who have overstayed, 241 (f) does not apply because there is no misrepresentation made in obtaining the visa which relates to the charge of overstaying.

CABUCO-FLORES v. I.N.S. 477 F. 2d 108 (9th Cir. 1973)

We agree that Section 241 (f) applies only where the fraud involved is related to the deportation charge. It is here. In the Order to Show Cause (Appendix p. 3) the petitioners are specifically charged with "entering the U.S. by falsely claiming to be a U.S. Citizen" and not presenting themselves for inspection. The government itself recognizes the direct relationship between the fraud and the charge of evading inspection.

H. CONCLUSION

Petitioners are entitled to relief from deportation by the express language of Section 241 (f), its legislative history and humanitarian purpose. Petitioners who obtained entry by fraudulently posing as citizens are fully qualified as "otherwise admissible" within the scope of the decision of this Court in Errico (supra) and their claims are fully supported by the decisions of the Ninth Circuit Court of Appeals in Lee Fook Chuey (supra), and the decision of the Fifth Circuit Court of Appeals in Gonzalez de Moreno, (supra).

The Court below in effect has amended the statute by judicial interpretation where interpretation is hardly warranted, by eliminating from its application aliens who procure entry by fraudulently posing as citizens. If the statute is to be amended it should be done by Congress.

The decision of the Court below should be reversed.

Dated at Hartford, Conn.
this 12th Day of November, 1974.

Respectfully submitted
Petitioners
By Benjamin Globman
Harry Cooper
their attorneys

APPENDIX

No. 73 – 1541

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DOCKET ENTRIES

Order to Show Cause – November 22, 1971
Administrative Hearing – December 13, 1971
Decision Special Inquiry Officer – May 8, 1972
Decision Board Immigration Appeals – December 12, 1972
Petition to Review Second Circuit Court of Appeals – Jan. 10, 1973
Decision Court Below – Feb. 13, 1974
Petition Writ Certiorari Filed – April 15, 1974
Certiorari Granted – October 15, 1974

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of)
ROBERT REID)
)
Respondent)

To: ROBERT REID (name) File No. A19 363 194

17 Spring Street, Danbury, Connecticut
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of British Honduras and a citizen of British Honduras;
3. You entered the United States at Chula Vista, California on or about November 29, 1968; (date)
4. You then entered the United States by falsely claiming to be a United States citizen;
5. You have never been a citizen of the United States;
6. You did not then present yourself to a United States Immigration Officer for inspection as an alien;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a) (2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at Room 367, Post Office Building, 135 High Street, Hartford, Connecticut on Monday, December 13, 1971 at 3:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: November 22, 1971

IMMIGRATION AND NATURALIZATION SERVICE

W. J. Kennedy
(signature and title of officer)
DISTRICT DIRECTOR, HARTFORD, CONN.
(City and state)

Form I-221
(Rev. 3-30-67)

(over)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
File No. A19 363 194 & A19 363 195 - Hartford, Connecticut May 8, 1972

In the Matter of ROBERT REID AND HIS WIFE NADIA ALICE REID Respondents	)	IN DEPORTATION PROCEEDINGS
CHARGE AS TO EACH:		I&N Act. Sec. 241(a) (2) (8 U.S.C. 1251 (a) (2)) Entry without inspection
APPLICATION BY EACH:		Termination of proceedings I&N Act. Sec. 241(f) (8 U.S.C. 1251(f)) - In the alternative voluntary departure
IN BEHALF OF THE RESPONDENTS		IN BEHALF OF SERVICE
Darius J. Spain, Esquire 142 Deer Hill Avenue Danbury, Connecticut		Ralph J. Smith, Trial Attorney

DECISION OF THE SPECIAL INQUIRY OFFICER

The respondents a married couple are natives and citizens of Honduras. The male respondent entered the United States on about November 29, 1968. The female respondent entered on or about January 3, 1969. Each entered by falsely claiming to be a United States citizen. Neither has ever been a citizen of the United States. Neither presented himself to a United States Immigration officer for inspection as an alien at the time of his entry into the United States.

Each of the respondents admitted that all of the factual allegations in the relating Order to Show Cause are true and each admitted deportability as charged in the Order to Sho Cause relating to him. Each of the respondents is found to be deportable as charged in the relating Order to Show Cause based on his own admissions.

The respondents have applied for termination of these proceedings under the provision of Section 241(f) of the Immigration and Nationality Act. They have submitted the birth certificates of their two children born in the United States, a boy born in New York City on November 2, 1969, and a second boy born in Danbury, Connecticut on April 4, 1971.

The Attorney General of the United States, in an opinion dated May 1, 1969, discussed the question as to whether the benefits of Section 241(f) of the Immigration and Nationality Act are available to an alien who entered the United States on a false claim of United States citizenship. He stated "I find nothing in the language of Section 241(f), it's legislative history or the Errico opinion to support the view that Congress intended to permit the complete circumvention of the Immigration visa system established by the Act. Such a circumvention would result from a holding that Section 241(f) applied to an alien who neither was granted nor applied for an immigrant visa, but obtained his initial entry by posing as a citizen." TThe attorney

General further stated "an alien who has not even applied for an immigrant visa, much less been examined and granted such a visa, has satisfied none of our Immigration requirements and cannot properly be treated as an 'otherwise admissable' alien." (A Matter of Lee I.D. 1960).

The Court of Appeals for the Ninth Circuit rejected the conclusion reached by the Attorney General in the Matter of Lee, Supra. (Lee Fook Chuey V. Ins. 439 F 2d 244, (9th Cir. 1971)).

However, the Board has not accepted the decision of the Ninth Circuit in Lee Fook Chuey as binding upon it. The Board stated "we are aware of no other Circuit which has followed the Ninth Circuit holdings in Lee Fook Chuey." Noting that a petition for Certiorari has been filed to review the decision of the Ninth Circuit in a similar case, the Board states "until the matter has been definitively resolved we are bound to accept the Attorney General's decision in the Matter of Lee (Fook Chuey), I.D. 1960 (A.G. 1969)." (Matter of Yee I.D. 2104, BIA Nov. 8, 1971.)

In the Matter of Yee, Supra, the Board stated that it is not bound to follow the Ninth Circuit Holding because "the fact that a lower Federal Court has rejected a legal conclusion of this Board does not require us to recede from that conclusion in other jurisdictions. The same principal would apply with at least equal vigor to an opinion of the Attorney General, such as the Attorney General's decision in Matter of Lee (Fook Chuey), Supra."

The respondents entered the United States on false claims of United States citizenship. They did not secure appropriate documents with which to enter and they were not inspected as aliens. They completely circumvented the Immigration visa system established by the Act in that they neither applied for nor were granted immigrant visas but obtained initial entry by posing as citizens. They have satisfied none of the applicable Immigration requirements. He cannot properly be treated as an "otherwise admissible" alien. Their applications for the benefits of Section 241(f) of the Immigration and Nationality Act will be denied on the authority of the Attorney General's opinion in Matter of Lee, Supra, and the Board of Immigration Appeals decision in Matter of Yee, Supra.

The respondents have applied in the alternative for the privilege of voluntary departure from the United States without expense to the government in lieu of deportation. Neither has ever been arrested. Neither has ever been a member of a subversive organization. They have the funds with which to effect their departure without expense to the United States Government. Each has stated he is willing to depart within the time and conditions set for his departure.

The male respondent stated that deportation or required departure from the United States would result in considerable hardship to his family because he has one child two years of age and another

eight months of age both of whom were born in the United States and further because when the respondents came to the United States they disposed of their possessions in British Honduras and would have no home to which they can return.

The respondents are statutorily eligible for the privilege of voluntary departure. No objection to the grant thereof has been made by the Immigration and Naturalization Service. That privilege will be granted to them as a matter of discretion. The period for voluntary departure will be extended to six months, subject to extension by the District Director, if appropriate, to give the respondents an opportunity to seek proper documentation with which to enter the United States for permanent residence.

For the purpose of this decision, the allegations of fact contained in each of the Orders to Show Cause are adopted as findings of fact as to the respondent to whom it relates and the charge contained in each of the Orders to Show Cause is adopted as a conclusion of law as to the respondent to whom it relates.

ORDER: It is ordered that the application of each respondent for termination of these proceedings under the provisions of Section 241(f) of the Immigration and Nationality Act be denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation each of the respondents be granted voluntary departure without expense to the government on or before June 20, 1972 or any extension beyond that date as may be granted by the District Director and under such conditions as he shall direct.

IT IS FURTHER ORDERED that if either or both of the respondents fail to depart voluntarily when and as required that the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall become immediately effective as to each such respondent: The respondent shall be deported from the United States to British Honduras on the charge contained in the Order to Show Cause.

EUGENE C. CASSIDY - SPECIAL INQUIRY OFFICER

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals

12/12/72

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In re: ROBERT REID
NADIA ALICE REID

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Benjamin Globman, Esquire
915 Asylum Avenue
Hartford, Connecticut 06105
(Brief filed)

CHARGES:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251(a)(2))- Entry without inspection (both aliens)

Lodged: None

APPLICATION: Termination of proceedings under section 241(f) of the Immigration and Nationality Act (both aliens)

This is an appeal from an order of a special inquiry officer dated May 8, 1972 finding the respondents deportable on the above-stated charge, denying their motion for termination of proceedings under section 241(f) of the Immigration and Nationality Act, and granting voluntary departure. The appeal will be dismissed.

The respondents are aliens, husband and wife, both natives of British Honduras who entered the United States at Chula Vista, California, on January 3, 1969 falsely claiming to be United States citizens.

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At the hearing before the special inquiry officer, at which they were represented by counsel, the respondents admitted the truth of the allegations of the Orders to Show Cause and conceded deportability. Counsel moved for termination of the proceedings under section 241(f) of the Act, and submitted the birth certificates of their two children born in the United States. The special inquiry officer found them deportable as charged and denied the application to terminate the proceedings, pursuant to decisions of this Board holding that section 241(f) does not benefit aliens who entered the United States on a false claim of United States citizenship, citing the Attorney General's decision in Matter of Lee, Interim Decision 1960 (BIA 1967; AG 1969). While that decision was reversed in Lee Fook Chuey v INS, 439 F.2d 244 (9 Cir. 1971), we are bound by the Attorney General's decision and adhere to it, Matter of Mangabat, Interim Decision 2131 (BIA 1972).

After careful evaluation of the entire record, we are satisfied that deportability was established by evidence which is clear, convincing and unequivocal, and that the respondents are ineligible for the benefits under section 241(f). We therefore dismiss the appeals. It is to be noted that at the hearing on December 13, 1971 the special inquiry officer advised that he would give the respondents six months to depart voluntarily, and he did this in effect since his order granting them 30 days voluntary departure was not entered until May 8, 1972. The additional time was given the respondents to afford them an opportunity to seek proper documentation with which to enter the United States for permanent residence. In accordance with our usual practice we will give the respondents the same amount of time to depart as the special inquiry officer granted in his order, namely 30 days.

ORDER: The appeals are dismissed.

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IT IS FURTHER ORDERED that, pursuant to the special inquiry officer's order, the respondents be permitted to depart from the United States voluntarily within 30 days from the date of this decision or any extension beyond that time as may be granted by the District Director; and that, in the event of failure so to depart, the respondents shall be deported as provided in the special inquiry officer's order.

Chairman